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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 In Re:) Bankruptcy Case
11 HOWARD J. MAIN and AMANDA H. MAIN,) No. 07-62583-fra7
12 Debtors.)
13 RICHARD SWANSON and CHARITY SWANSON,) Adversary Proceeding
14 Plaintiff,) No. 08-6237-fra
15 vs.)
16 HOWARD J. MAIN and AMANDA H. MAIN,) MEMORANDUM OPINION
17 Defendants.)

18 Howard and Amanda Main were indebted to Richard and Charity
19 Swanson for \$20,000.00 as monumented by a promissory note dated January
20 25, 2007. No part of the obligation has been paid, and the Mains filed a
21 petition for relief under Chapter 7 of the Bankruptcy Code on September
22 14, 2007.

23 The Plaintiffs now seek a judgment excepting their claim from
24 discharge pursuant to Code § 523(a)(2)(A). They further seek revocation
25 of the Debtors' discharge under Code § 727(d). The matter came on for
26 trial in Medford, Oregon, on January 21, 2010. After considering the

1 testimony and evidence of parties, the Court concludes that the
2 Plaintiffs have not sustained their burden of proof, and that the
3 Debtors' discharge both generally and of the Plaintiffs' claim, must be
4 allowed.

5 I. PROCEDURAL ISSUES

6 The Debtors' petition for relief was filed on September 14,
7 2007. The deadline for objection to discharge was set for December 14,
8 2007. This adversary proceeding was instituted a year later, on December
9 18, 2008.

10 Debtors maintain that the adversary proceeding is not timely,
11 and should be dismissed.

12 The Debtors' petition for relief was a "bare" filing,
13 unaccompanied by schedules. Their schedules were subsequently filed on
14 September 24, 2007. Schedule F, setting out the holders of unsecured
15 nonpriority claims, listed the Plaintiffs' claim under the name of
16 "Richard Swanson, Grants Pass, Oregon 97526." No other address was
17 given. The chapter 7 trustee subsequently reported the case as a "noasset
18 estate," the Debtors' discharge was entered on December 17, 2007,
19 and the case was closed on that date.

20 Andrea Main wrote to the Plaintiffs on February 4, 2008,
21 disclosing that the Debtors had gone into bankruptcy: "It was our
22 understanding that you were notified by our attorney of this. I believe
23 now that maybe you were not." Charity Swanson testified, without
24 contradiction, that this was the first time that she had heard of the
25 Mains' bankruptcy.

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1 When a debt is not listed or scheduled by a debtor with the
2 creditor's name, if known to the debtor, Code § 523(a)(3)(B) excepts from
3 discharge a claim of the sort specified in § 523(a)(2), unless the
4 creditor had notice or actual knowledge of the case in time for a timely
5 filing of an objection to discharge. The Plaintiffs were not aware of
6 the Debtors' bankruptcy until February 4, 2008, or shortly thereafter.
7 While the language of the Code requires only that the creditor's name be
8 indicated, applicable rules and instructions regarding preparation of
9 schedules clearly indicate that an address be added.¹ The parties in
10 this case belong to the same church, had met in person several times, and
11 live in a relatively small community. There is no reason to believe that
12 the Defendants were not aware of, or could not have easily ascertained,
13 the Plaintiffs' address. The notice provided by the schedules in this
14 case was not sufficient to permit discharge of the Debtors' obligation to
15 the Plaintiffs without giving the Plaintiffs an opportunity to object.
16 It follows that the Court must consider the merits of Plaintiffs' claim
17 under Code §§ 523 and 727.

18 II. ANALYSIS

19 Prior to the time the loan was made, it had become known
20 throughout the parties' congregation that Debtors were in dire financial
21 straits. At some point it was agreed that the parties should meet to
22 discuss ways in which the Swansons could assist the Mains (Mrs. Swanson
23 claims that Mrs. Main made the first call; Mrs. Main has no particular
24 memory).

25 ¹See Fed.R.Bankr.P. 1007(b)(1). The official form for disclosure
26 of unsecured claims, Schedule F, requires an address for each creditor.

debtor made a material misrepresentation, (2) with knowledge of its falsity, (3) with the intent to deceive, (4) on which the creditor justifiably relied, and (5) due to which the creditor sustained loss or damage. In re Kirsh, 973 F.2d 1454, 1457 (9th Cir. 1992).

The Plaintiffs' claim fails in two respects:

(1) The exception for false pretenses, a false representation, or actual fraud excludes statements respecting the debtors' financial condition. There is no evidence that the Debtors tendered, or that the Plaintiffs relied, on any written statement regarding the Debtors' finances, or their intended use of the funds. Note that the promissory note is silent on these issues.

(2) Even if Code § 523(a)(2)(A) applied in this situation, the Plaintiffs fail to advance any evidence that the Debtors intended to deceive them.

Code § 727(d)

Code § 727(d)(1) requires that the court revoke a debtor's discharge if "such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the gaining of such discharge." This requires the showing of an intentional wrong, such as the intentional omission of assets from the debtor's schedules. See 6 Collier on Bankruptcy ¶ 727.15[2] (15th ed. rev.).

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1 Because the Plaintiffs presented no evidence that the Debtors
2 obtained their general bankruptcy discharge of debts through intentional
3 wrongdoing, their claim under § 727(d) must fail.²

4 III. CONCLUSION

5 For the reasons given, Plaintiffs' claims against the
6 Defendants to except their debt from discharge under Code § 523(a)(2)
7 and for revocation of Defendants' general discharge of debts must be
8 denied. Counsel for Defendants should submit a form of judgment
9 consistent with this memorandum opinion.

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12 FRANK R. ALLEY, III
13 Bankruptcy Judge
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24 ²The complaint also has a claim under § 727(a)(4) to deny Debtors'
25 discharge. Assuming Plaintiffs could bring such a claim after the
26 discharge has already been granted, the court would also find for
Defendants, as there is no evidence implicating any of the situations
found in that provision.